In the Court of Hon'ble High Court of Chhattisgarh at Bilaspur (C.G.)

Writ petition No.....5013...../2004

Ram Awadh Singh Bhadauriya Son of Mr. B.S. Bhadauriya aged about 46 years posted as Senior Horticulture Development Officer at the Office of the Office Pendra Road Lalpur Pendra Road Lalpur District Bilaspur (C.G.) -- Petitioner

Versus

1. State of Chhattisgarh through its Secretary Personnel and General Administration, D.K.S. Bhavan Mantralaya Raipur (C.G.)
2. Secretary Agriculture Department, D.K.S. Bhavan Mantralaya Raipur.
3. Director, Udhyaniki Avam Prakshetra Vaniki C.G. Raipur.
4. Diputy Director, Udhyaniki Avam Prakshetra

-- Respondents.

:- 5) Narayan Singh Narvariya S/o Ganesh Singh Narvariya, Address: Office of the Assistant Director Udhyan, District - Mahasamund (C.G.)

Amended vide court order dt 15.2.06 3-3-06

6) Ramakant Swarnkar S/o Tulsi Swarnkar, Address : Office of the Assistant Director Udhyan, District- Bilaspur (C.G.)

7) Rambiharı Parihar S/o Prem Singh Parihar, Address : Office of the Assistant Director Udhyan, District - Janjgir - Champa(C.G.)

8) Rajkumar Jain S/o Badriprasad Jain, Address : Office of the Assistant Director Udhyan, District - Dantewada(C.G.).

9) Ramkishore Sharma S/o Mahadev Prasad Sharma, Address : Office of the Assistant Director Udhyan, District ~~Dantewada~~ (C.G.)

10) Mahendra Pratap Singh Chouhan S/o Sudarshan Singh Chouhan, Address : Office of the Assistant Director Udhyan, District-RaipurCG

11) Ajay Singh Kushwaha, S/o Shri Prakash Singh Kushwaha, Address: Office of the Assistant Director Udhyan, District Jashpur (C.G.)

12) Nagendra Singh Patel S/o Ramnath Patel, Address : Office of the Assistant Director Udhyan, District - Korba (C.G.).

13) Ramji Trivedi S/o Kunjbihari, Address Office of the Assistant Director Udhyan, District- Bilaspur (C.G.)

14) Chandradev Singh S/o Rampratap Singh Address: Office of the Assistant Director Udhyan, District- Janjgir (C.G.)

15) Neeraj Kumar Shah S/o D.P.Shah, Address: Office o: the Assistant Director Udhyan, District - Raipur(C

16) Ramdhar Patel S/o Gajadhar Patel, Address: Office of the Assistant Director

15) Neeraj Kumar Shah S/o D.P.Shah, Address: Office o the Assistant Director Udhyan, District - Raipur(C

16) Ramdhar Patel S/o Gajadhar Patel, Address: Office of the Assistant Director Udhyan, District- Korea(C.G

17) Ram Nihore Pandy S/o Gorelal, Address : Office of the Assistant Director Udhyan, District-Surguja(C

18) Manoj Kumar Ambar S/o Jagdish Prasad Ambar, Address : Office of the Assistant Director Udhyan, Distt- Surguja (C.G.)

19) Vimal Kumar Gautam S/o Narvada, Address: Office of the Assistant Director Udhyan, District- Rajnandgaon (C.G.).

20) Nidhan Singh Kushwaha, S/o Ramdas, Address: Office of the Assistant Director Udhyan, District- Jashpur (C.G.).

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HIGH COURT OF CHHATTISGARH AT BILASPUR

SINGLE BENCH : HON'BLE MR. SATISH K. AGNIHOTRI, J.

WRIT PETITION NO.5013 OF 2004

Ram Awadh Singh Bhadauriya

versus

State of Chhattisgarh and others

ORDER

Post for / -12-2006

Sd/-
Satish K. Agnihotri
Judge
30-11-2006

(15)

HIGH COURT OF CHHATTISGARH AT BILASPUR

SINGLE BENCH : HON'BLE MR. SATISH K. AGNIHOTRI, J.

WRIT PETITION NO.5013 OF 2004

Petitioner : Ram Awadh Singh Bhadauriya

versus

Respondents : State of Chhattisgarh and others

Present : Mr. Anil Singh Rajput, counsel for the petitioner.
Mr. Sushil Dubey, Government Advocate for respondents No.1 to 4.
Mr. Akhilesh Dalpati, counsel for respondent No.6.
Mr. H.S.Patel, counsel for respondent No.9.
Dr. N.K.Shukla, Senior Advocate with Mrs. A. Sengupta, counsel for respondent No.16.

ORDER

(Passed on 1st of December, 2006)

The present petition filed under Articles 226/227 of the Constitution of India seeks a direction to determine seniority by fixing the seniority of the petitioner with effect from 30-11-1985 (Annexure P-3).

2. The facts in nutshell are that according to the petitioner, the petitioner was appointed as Senior Horticulture Development Officer by order dated 30-11-1985 (Annexure P-3). Thereafter, the petitioner was selected through Madhya Pradesh Junior Service Selection Board (*Sic* Mini Service Selection Board), Bhopal as per notification dated 17-

10-1989 and was appointed as Senior Horticulture Development Officer on probation for a period of two years by order dated 28-10-1989 (Annexure P-4). The name of the petitioner in the seniority list (Annexure P-2) was shown at Sl.No.15 taking the date of first appointment as 31-8-1982 and entry into the service on 16-12-1985. Thereafter, on the basis of representations, amended final seniority list as on 1-4-2003 (Annexure P-1) was issued, wherein the name of the petitioner was found at Sl.No.29, wherein the date of first appointment was recorded as 28-10-1989 and the date of entry in service was also recorded as 28-10-1989.

3. Being aggrieved by the amended final seniority list as on 1-4-2003 (Annexure P-1), the petitioner has filed this petition seeking a writ/direction to respondents No.1 to 4 to assign the seniority of the petitioner with effect from 30-11-1985.

4. Mr. Anil Singh Rajput, learned counsel appearing for the petitioner would submit that the petitioner was appointed on 30-11-1985 for a period of 6 months or till a duly selected candidate through the Junior Service Selection Board is appointed. The petitioner continued in service till he was selected by the Junior Service Selection Board through notification dated 17-10-1989 and was appointed by order dated 28-10-1989 (Annexure P-4). Thus, the petitioner is entitled to seniority with effect from the date of his first appointment, i.e., 30-11-1985.

5. Mr. Sushil Dubey, learned Government Advocate appearing for respondents No.1 to 4, *per contra*, would submit that the

petitioner was appointed for the first time in accordance with law through the Junior Service Selection Board by order dated 28-10-1989 (Annexure P-4) on the basis of the notification of the Junior Service Selection Board dated 17-10-1989. The earlier appointment of the petitioner, vide order dated 30-11-1985 (Annexure P-3), was not in accordance with law by inviting all the eligible candidates for the selection. By order dated 30-11-1985 (Annexure P-3), the petitioner was appointed on a term basis for a period of six months or till a new incumbent is appointed through proper selection by the Junior Service Selection Board, whichever is earlier. It is true that the petitioner continued in service. However, the petitioner has no right on the post as the appointment of the petitioner was not in accordance with constitutional scheme or any rules framed under proviso to Article 309 of the Constitution of India. His first appointment, in accordance with law, is by order dated 28-10-1989 (Annexure P-4). Thus, the petitioner has rightly been granted seniority with effect from 28-10-1989. The seniority list at Annexure P-2 contains several typographical and other errors as the date of first appointment of the petitioner, i.e., 31-8-1982 and the date of entry in service 16-12-1985 have no relevance in case of the petitioner as he was never appointed in any capacity temporary, *ad hoc* or otherwise on 31-8-1982 and thereafter confirmed in service on 16-12-1985.

6. All the respondents have been duly served. Mr. Akhilesh Dalpati, learned counsel appearing for respondent No.6, Mr. H.S.Patel, learned counsel appearing for respondent No.9 and Dr. N.K.Shukla, learned Senior Advocate with Mrs. A. Sengupta, learned counsel appearing for respondent No.16 adopt the submissions made by

respondents No.1 to 4 and remaining respondents did not choose to appear in the matter despite proper service.

7. I have heard learned counsel appearing for the parties and perused the records. It is evident that the seniority list (Annexure P-2) contains several mistakes as the date of first appointment of the petitioner, i.e., 31-8-1982, mentioned against the name of the petitioner, has never taken place and even the confirmation in the service as mentioned on 16-12-1985 has also never taken place and this is not the case of the petitioner also that he was appointed on 31-8-1982. The case of the petitioner is that he was appointed on *ad hoc* basis by order dated 30-11-1985 (Annexure P-3) for the first time and not prior to that. The first appointment of the petitioner by order dated 30-11-1985 (Annexure P-3) is admittedly not in accordance with law and it was a stop gap arrangement appointment for a period of six months or till new candidate is appointed through proper selection by the Junior Service Selection Board, whichever is earlier. Since the petitioner's first appointment by order dated 30-11-1985 (Annexure P-3) was not in accordance with law, this period cannot be taken into consideration for determining the seniority of the petitioner with effect from 30-11-1985. The petitioner was selected through the Junior Service Selection Board by the notification dated 17-10-1989 and was appointed by order dated 28-10-1989 (Annexure P-4). Thus, the seniority of the petitioner can be reckoned from 28-10-1989 only. Even in the order dated 28-10-1989 (Annexure P-4), there is no mention of earlier appointment of the petitioner as stop gap arrangement and the appointment was not in continuation of the earlier stop gap arrangement appointment on 30-11-1985 (Annexure P-3).

8. In the case of ***Direct Recruit Class II Engineering Officers' Association*** **vs.** ***State of Maharashtra and others***[1], relied on by learned counsel for the petitioner that the present case is governed by the dictum laid down by the Constitution Bench in the case are squarely applicable to the facts of the present case, the Supreme Court observed as under :-

> "47. To sum up, we hold that :
>
> (A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation.
>
> The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.
>
> (B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted.
>
> (C) xxxxx xxxxx xxxxx xxxxx
> (D) xxxxx xxxxx xxxxx xxxxx
> (E) xxxxx xxxxx xxxxx xxxxx
> (F) xxxxx xxxxx xxxxx xxxxx
> (G) xxxxx xxxxx xxxxx xxxxx
> (H) xxxxx xxxxx xxxxx xxxxx
> (I) xxxxx xxxxx xxxxx xxxxx
> (J) xxxxx xxxxx xxxxx xxxxx"

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9. In the case of ***Suraj Parkash Gupta and others*** vs. ***State of J&K and others***[2], the Supreme Court held as under :-

> "75. These rulings cannot be applied to the case of the promotees. In fact the principle laid down in these cases is consistent with the principles in service jurisprudence so far as the ad hoc service rendered by direct recruits before the date of their regular selection is concerned. Their service counts only from the date of regular appointment according to rules and any ad hoc/stopgap service rendered before regular selection cannot count for seniority."

> "81. This contention, in our view, cannot be accepted. The reason as to why this argument is wrong is that in service jurisprudence, a direct recruit can claim seniority only from the date of his regular appointment. He cannot claim seniority from a date when he was not borne in the service. This principle is well settled. In *N.K. Chauhan* v. *State of Gujarat*[14] (SCC at p. 325, para 32) Krishna Iyer, J. stated:
>
> > Later direct recruits cannot claim deemed dates of appointment for seniority with effect from the time when direct recruitment vacancy arose. Seniority will depend upon length of service.
>
> Again, in *A. Janardhana* v. *Union of India*[25] it was held that a later direct recruit cannot claim seniority from a date before his birth in the service or when he was in school or college. Similarly it was pointed out in *A.N. Pathak* v. *Secy. to the Govt.*[27] (SCC at p. 767 that slots cannot be kept

reserved for direct recruits for retrospective appointments."

10. In the case on hand, the petitioner was appointed as stop gap arrangement by order dated 30-11-1985 (Annexure P-3). The appointment was fortuitous appointment as it was neither in accordance with law nor against a substantive vacancy. The Supreme Court, in ***D. Ganesh Rao Patnaik and others*** **vs.** ***State of Jharkhand and others***[3], explains fortuitous appointment as under :-

> "22. .....What is a fortuitous appointment has been explained in a Constitution Bench decision of this Court in *Rudra Kumar Sain* v. *Union of India*[8]. After observing that the Rules in question did not define the terms "ad hoc", "stopgap" and "fortuitous", which are in frequent use in service jurisprudence, the Court referred to several dictionaries. The meaning given to the expression "fortuitous" in *Stroud's Judicial Dictionary* is "accident or fortuitous casualty". This should obviously connote that if an appointment is made accidentally, because of a particular emergent situation, such appointment obviously would not continue for a reasonably long period. In *Black's Law Dictionary* the expression "fortuitous" means "occurring by chance", "a fortuitous event may be highly unfortunate". It thus indicates that it occurs only by chance or accident, which could not have been reasonably foreseen. In *Oxford Dictionary* the meaning given to the word "fortuitous" is, happening by accident or chance rather than design. ....."

11. The facts of the present case are covered by the dictum of the Supreme Court as laid down in ***Direct Recruit Class II Engineering Officers' Association*** **vs.** ***State of Maharashtra and others*** (Supra). The appointment of the petitioner was not on officiating basis nor on *ad hoc*, but as a stop gap arrangement not in accordance with the rules. Thus, the petitioner was not borne in the service till he was appointed by the Junior Service Selection Board by order dated 28-10-1989 (Annexure P-4).

12. A Constitution Bench of the Supreme Court in ***Secretary, State of Karnataka and others*** **vs.** ***Umadevi (3) and others***[4], held as under :-

> "43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. ....."

13. As a result, for the reasons made hereinabove and in view of the authoritative judicial pronouncements made by the Supreme Court in various cases, this petition is dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge
/-12-2006

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1 (1990) 2 SCC 715
2 (2000) 7 SCC 561
3 (2005) 8 SCC 454
4 (2006) 4 SCC 1